

TO: Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	SOLICITOR AUG 10 2007	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court _____ on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. CV 07-04050 RS	DATE FILED 8/7/7	U.S. DISTRICT COURT Northern District of California, 280 N. 1 st St., San Jose, CA 95121
PLAINTIFF SYMYX TECHNOLOGIES, INC.		DEFENDANT ACCELERGY CORPORATION, ET AL
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 7,216,113		COPY OF COMPLAINT ATTACHED
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In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Richard W. Wieking	(BY) DEPUTY CLERK Betty Walton	DATE August 8, 2007
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Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

1 incurred damages in an amount not yet ascertained, but in any event in excess of the jurisdictional
2 amount of this Court. Symyx, therefore, is entitled to recover compensatory damages in an
3 amount to be determined at trial.

4 47. In breaching his duty of loyalty to Symyx, Cong acted with malice, fraud and
5 oppression, and in conscious disregard of Symyx's rights. Accordingly, Symyx is entitled to
6 recover exemplary damages from Cong in an amount to be determined at trial.

8 SIXTH CLAIM FOR RELIEF

9 (Breach of Contract Against Yumin Liu)

10 48. Symyx incorporates the allegations of paragraphs 1-17 as if fully set forth in this
11 paragraph.

12 49. On March 30, 1998, Yumin Liu entered into a Confidential Information, Secrecy,
13 and Invention Agreement with Symyx ("Liu Agreement"). As part of the Liu Agreement, Yumin
14 Liu agreed, while employed at Symyx, not to engage in any employment, consulting or other
15 activity in business directly or indirectly competitive with Symyx's business.

16 50. The Liu Agreement entered into by Symyx and Yumin Liu is a valid and
17 enforceable contract.

18 51. Symyx has performed any or all of its obligations or conditions imposed on it under
19 the Liu Agreement, or such conditions and obligations have been otherwise waived by Liu's
20 breaches as alleged herein.

21 52. Liu has breached the Liu Agreement by, among other things, using Symyx's
22 business information to form a company to compete with Symyx in violation of the Liu
23 Agreement.

24 53. As a direct and proximate result of Yumin Liu's breach of the Liu Agreement,
25 Symyx has been damaged in an amount to be proven at trial.

1 54. In addition, as a direct and proximate result of Liu's breach of the Liu Agreement,
2 Symyx has been irreparably injured, and has no adequate remedy at law. As a result, Symyx is
3 entitled to injunctive and other forms of equitable relief against Liu.

4 **SEVENTH CLAIM FOR RELIEF**

5 (Breach of Duty of Loyalty Against Yumin Liu)

6 55. Symyx incorporates the allegations of paragraphs 1-17 and 49-54 as if fully set
7 forth in this paragraph.

8 56. As an employee of Symyx, Liu owed a duty of undivided loyalty to his employer.
9 Pursuant to this duty, during his employment with Symyx, Liu could not compete with Symyx, or
10 assist a competitor of Symyx, or use or disclose Symyx's information in contravention of the Liu
11 Agreement. Pursuant to this duty, Liu was also required to always give preference to Symyx's
12 business over his own, similar interests during the course of his employment with Symyx.

13 57. Liu breached his duty of loyalty to Symyx by using Symyx's information, data and
14 employees to secretly create a business that competed with Symyx and infringed Symyx's
15 proprietary patent rights.

16 58. As a direct and proximate result of Liu's breach of duty of loyalty, Symyx has
17 incurred damages in an amount not yet ascertained, but in any event in excess of the jurisdictional
18 amount of this Court. Symyx, therefore, is entitled to recover compensatory damages in an
19 amount to be determined at trial.

20 59. In breaching his duty of loyalty to Symyx, Liu acted with malice, fraud and
21 oppression, and in conscious disregard of Symyx's rights. Accordingly, Symyx is entitled to
22 recover exemplary damages from Liu in an amount to be determined at trial.

23 **EIGHTH CLAIM FOR RELIEF**

24 (Intentional Interference with Contract Against All Defendants)

25 60. Symyx incorporates the allegations of paragraphs 1-59 as if fully set forth in this

1 paragraph.

2 61. Symyx had valid contracts with Wang, Cong and Liu pursuant to which Wang,
3 Cong and Liu each agreed during their employment with Symyx, *inter alia*, not to engage in any
4 employment, consulting or other activity in business directly or indirectly competitive with
5 Symyx's business.

6 62. Symyx is informed and believes and on that basis alleges that Accelergy knew that
7 Symyx had contracts with Wang, Cong and Liu that prevented Wang, Cong and Liu from
8 engaging in any employment, consulting or other activity in business directly or indirectly
9 competitive with Symyx's business, and each of the individual defendants knew that the other
10 individual defendants had contracts with Symyx that prevented Wang, Cong and Liu from
11 engaging in any employment, consulting or other activity in business directly or indirectly
12 competitive with Symyx's business.

13 63. Symyx is informed and believes and on that basis alleges that Accelergy and each
14 of the individual defendants knew that using Wang, Cong and Liu to develop a business to directly
15 compete with Symyx while Wang, Cong and Liu were still Symyx employees would disrupt
16 Symyx's contractual relationships with Wang, Cong and Liu and intended to disrupt those
17 contractual relationships.

18 64. Accelergy and the individual defendants have caused actual disruption to the
19 contractual relationships between Symyx and Wang, Cong and Liu.

20 65. As a direct and proximate result of the actions taken by Accelergy and the
21 individual defendants in interfering with Symyx's contractual relationships, Symyx has suffered
22 and continues to suffer damages in an amount to be proven at trial.

23 66. In interfering with Symyx's contractual relationships, Accelergy and the individual
24 defendants acted with malice, fraud and oppression, and in conscious disregard of Symyx's rights.

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1 Accordingly, Symyx is entitled to recover exemplary damages in an amount to be proven at trial.

2 67. As a result of the actions taken by Accelergy and the individual defendants in
3 interfering with Symyx's contractual relationships, Symyx has suffered and will continue to suffer
4 irreparable harm, including but not limited to harm to its business reputation and goodwill.
5 Symyx is informed and believes and on that basis alleges that Accelergy and the individual
6 defendants threaten to continue their wrongful actions, and unless restrained and enjoined, will do
7 so. Symyx's remedy at law is not by itself adequate to compensate Symyx for the harm inflicted
8 and threatened by Accelergy and the individual defendants.
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10 **NINTH CLAIM FOR RELIEF**

11 (Unfair Competition Under Cal. Bus. & Prof. Code § 17200 Against All Defendants)

12 68. Symyx incorporates the allegations of paragraphs 1-67 as if fully set forth in this
13 paragraph.

14 69. Defendants' acts, as alleged herein, constitute unfair business acts and practices in
15 violation of California Business and Professions Code § 17200 et seq, in that such actions are
16 unfair, deceptive and unlawful.
17

18 70. Symyx has suffered an actual loss due to Defendants' actions.

19 71. Symyx is further entitled to restitution, an accounting of Defendants' profits, and
20 the disgorgement of Defendant's ill-gotten gains.

21 72. Symyx's remedy at law is not by itself sufficient to compensate Symyx for injuries
22 inflicted and threatened by Defendants. Thus, Symyx is entitled to Accelergy's and the individual
23 defendants' disgorgement of revenues and/or profits from their respective wrongful acts and
24 injunctive relief to prohibit Defendants from continuing their unfair, deceptive and illegal actions.
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1 employees, and all other persons in privity or acting in concert with Accelergy from further
2 infringement of the '113 patent, or from further breaching any contractual obligation owing from
3 them to Symyx;

4 E. For a declaration that this case is exceptional, and for an award to Symyx of
5 attorneys' fees, expenses, and costs pursuant to 35 U.S.C. § 285;

6 F. For compensatory damages resulting from the individual defendants breach of
7 contract;

8 G. For compensatory damages resulting from all defendants' tortious conduct toward
9 Symyx (including breaches of the duty of loyalty and interference with contract and common law
10 unfair competition);

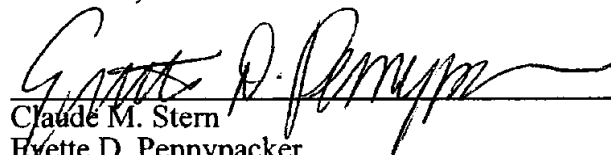
11 H. For disgorgement of all profits, revenues or investments that Accelergy receives as
12 a result of any wrongful action as averred herein by Accelergy;

13 I. Awarding Symyx punitive damages in an amount to be determined at trial; and

14 J. For an award to Symyx of such other and further relief as this Court deems just and
15 proper.

16
17 DATED: August 7, 2007

18 QUINN EMANUEL URQUHART OLIVER &
19 HEDGES, LLP

20 

21 Claude M. Stern
22 Evette D. Pennypacker
23 Bobbie N. Eftekar
24 Attorneys for Plaintiff
25 Symyx Technologies, Inc.
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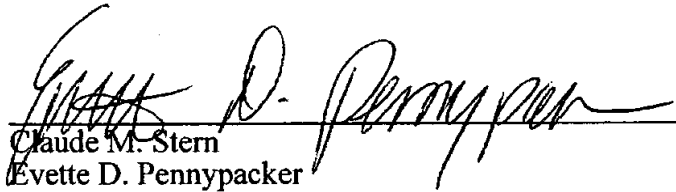
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DEMAND FOR JURY TRIAL

In accordance with Federal Rule of Civil Procedure 38(b), Symyx demands a trial by jury.

DATED: August 7, 2007

QUINN EMANUEL URQUHART OLIVER &
HEDGES, LLP



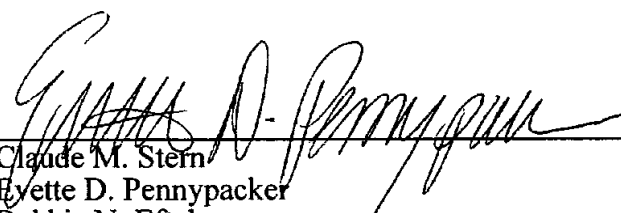
Claude M. Stern
Evette D. Pennypacker
Bobbie N. Eftekar
Attorneys for Plaintiff
Symyx Technologies, Inc.

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2 **CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

3 Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the
4 named parties, there is no such interest to report.

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6
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8 DATED: August 7, 2007
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10 QUINN EMANUEL URQUHART OLIVER &
11 HEDGES, LLP

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14 Claude M. Stern
15 Elyette D. Pennypacker
16 Bobbie N. Eftekar
17 Attorneys for Plaintiff
18 Symyx Technologies, Inc.
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ORIGINAL
FILED
07 AUG -7 PM 2:19
RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
N.D. DISTRICT OF CALIF.

C07 04050

SYMYX TECHNOLOGIES, INC., a
Delaware corporation,

Plaintiff,

vs.

ACCELERGY CORPORATION, a Delaware
Corporation, YOUQI WANG, PEIJUN
CONG, and YUMIN LIU,

Defendants.

**COMPLAINT FOR PATENT
INFRINGEMENT, BREACH OF
CONTRACT, BREACH OF DUTY OF
LOYALTY, INTENTIONAL
INTERFERENCE WITH CONTRACT
AND UNFAIR COMPETITION**

DEMAND FOR JURY TRIAL

**CERTIFICATION OF INTERESTED
ENTITIES OR PERSONS**

Plaintiff Symyx Technologies, Inc. ("Symyx") complains in this action against Defendants
Accelergy Corporation ("Accelergy"), Youqi Wang ("Wang"), Peijun Cong ("Cong"), and Yumin
Liu ("Liu") as follows:

THE PARTIES

1. Symyx is a corporation incorporated under the laws of the State of Delaware with
its principal place of business in Santa Clara, California. Symyx is qualified and duly authorized
to do business in the State of California. At all relevant times, Symyx is and was an industry
leader in the development and application of High Throughput Experimentation (HTE), an

1 advanced materials development technology. Symyx performs research for customers using
2 proprietary technologies to discover new and innovative materials. Symyx also designs, builds
3 and sells automated research equipment and associated software. Materials discovered using
4 Symyx's research technologies have been commercialized in a wide variety of industrial
5 applications, including, for example, catalysts for use in the energy industry.

6 2. Symyx is informed and believes and on that basis alleges that Accelergy is a
7 Delaware corporation with its principal place of business in Palo Alto, California.

8 3. Symyx is informed and believes and on that basis alleges that, at all relevant times,
9 Accelergy was and is a materials development company engaged in the business of formulating
10 advanced materials for the energy industry using research processes based on HTE. Symyx is
11 further informed that former Symyx employees who worked on the development and
12 implementation of Symyx's patented research and development methods are currently working for
13 Accelergy to develop and implement research and development methods and processes that
14 infringe Symyx's proprietary patent rights.

15 4. Symyx is informed and believes and on that basis alleges that Wang is an
16 individual residing in California. Wang is a former Symyx employee and named inventor on
17 approximately eight issued United States patents assigned to Symyx. Symyx is informed and
18 believes and on that basis alleges that, unbeknownst to Symyx, Wang co-founded Accelergy
19 while he was still a Symyx employee and is currently Accelergy's Chief Technology Officer
20 (CTO).

21 5. Symyx is informed and believes and on that basis alleges that defendant Cong is an
22 individual residing in California. Cong is a former Symyx employee and named inventor on
23 approximately ten issued United States patents assigned to Symyx. Symyx is informed and
24 believes and on that basis alleges that, unbeknownst to Symyx, Cong participated in the effort to
25 form Accelergy and Cong left Symyx to join Accelergy.

26 6. Symyx is informed and believes and on that basis alleges that defendant Liu is an
27 individual residing in California. Liu is a former Symyx employee and named inventor on
28 approximately eight issued United States patents assigned to Symyx. Symyx is informed and

1 believes and on that basis alleges that, unbeknownst to Symyx, Liu participated in the effort to
2 form Accelergy and Liu left Symyx to join Accelergy.

3 **JURISDICTION AND VENUE**

4 7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§
5 1331 and 1338(a) in that this case arises under the patent laws of the United States, 35 U.S.C. § 1
6 *et seq.*

7 8. This Court has supplemental jurisdiction over the state law claims under 28 U.S.C.
8 § 1367, in that the facts underlying the state law claims are so related to the patent law claims that
9 they form part of the same case or controversy under Article III of the United States Constitution.

10 9. Defendant Accelergy is subject to personal jurisdiction in this Court because, *inter*
11 *alia*, and upon information and belief, Accelergy has its principal place of business and office in
12 this judicial district and directly and through agents regularly does, solicits and transacts business
13 in the Northern District of California and elsewhere in the state of California, including business
14 with respect to the products and services that are the subject of this action.

15 10. This Court has personal jurisdiction over Wang because, upon information and
16 belief, Wang resides in California and he has consented to jurisdiction in this court by express
17 written agreement with Symyx.

18 11. This Court has personal jurisdiction over Cong because, upon information and
19 belief, Cong resides in California and he has consented to jurisdiction in this court by express
20 written agreement with Symyx.

21 12. This Court has personal jurisdiction over Liu because, upon information and belief,
22 Liu resides in California and he has consented to jurisdiction in this court by express written
23 agreement with Symyx.

24 13. Symyx avers upon information and belief that a substantial part of the events giving
25 rise to its claims occurred in this district. Symyx also avers upon information and belief that the
26 defendants have committed the acts complained of within this judicial district. Venue is therefore
27 proper in this district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

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1 **FIRST CLAIM FOR RELIEF**

2 (Infringement of United States Patent No. 7,216,113 Against Accelergy)

3 18. Symyx incorporates the allegations of paragraphs 1-3, 7-9, 13 and 14 as if fully set
4 forth in this paragraph.

5 19. United States Patent No. 7,216,113 (the '113 patent) entitled "Remote Execution of
6 Materials Library Designs" was duly and legally issued to Symyx on May 8, 2007. Symyx has the
7 right to sue for infringements of this patent. A true and correct copy of the '113 patent is attached
8 hereto as Exhibit 1.

9 20. Accelergy has directly infringed and continues to directly infringe the '113 patent.
10 Accelergy's infringing acts include making, using, offering to sell, selling, and/or importing
11 products and/or services that infringe the '113 patent and/or practicing methods covered by the
12 '113 patent in violation of 35 U.S.C. § 271(a). Accelergy has also been knowingly and
13 intentionally inducing others to infringe the '113 patent in violation of 35 U.S.C. § 271(b), and has
14 been contributorily infringing the '113 patent in violation of 35 U.S.C. § 271(c).

15 21. Accelergy's infringement of the '113 patent has caused damage to Symyx, and
16 Symyx is entitled to recover from Accelergy the damages sustained by Symyx as a result of its
17 wrongful acts in an amount subject to proof at trial.

18 22. Accelergy's infringement of the '113 patent will continue to damage Symyx's
19 business, causing irreparable harm for which there is no adequate remedy at law, unless it is
20 enjoined by this Court, entitling Symyx to injunctive relief against Accelergy and all its agents,
21 employees and others who are participating in its acts of infringement.

22 23. Accelergy's infringement of the '113 patent is and has been willful and deliberate,
23 since on information and belief Accelergy is aware of the '113 patent, entitling Symyx to enhanced
24 damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action
25 under 35 U.S.C. § 285.

26 **SECOND CLAIM FOR RELIEF**

27 (Breach of Written Contract Against Youqi Wang)

28 24. Symyx incorporates the allegations of paragraphs 1-17 as if fully set forth in this

1 paragraph.

2 25. On or about March 1, 1996, Wang and Symyx entered into a written employment
3 Confidential Information, Secrecy, and Invention Agreement ("Wang Agreement"). As part of the
4 Wang Agreement, Wang agreed, while employed at Symyx, not to engage in any employment,
5 consulting or other activity in business directly or indirectly competitive with Symyx's business.
6

7 26. The Wang Agreement entered into by Symyx and Wang is a valid and enforceable
8 contract.

9 27. Symyx has performed any or all of its obligations or conditions imposed on it under
10 the Wang Agreement, or such conditions and obligations have been otherwise waived by Wang's
11 breaches as alleged herein.

12 28. Wang has breached the Wang Agreement by, among other things, using Symyx's
13 business information to form a company to compete with Symyx in violation of the Wang
14 Agreement.
15

16 29. As a direct and proximate result of Wang's breach of the Wang Agreement, Symyx
17 has been damaged in an amount to be proven at trial.

18 30. In addition, as a direct and proximate result of Wang's breach of the Wang
19 Agreement, Symyx has been irreparably injured, and has no adequate remedy at law. As a result,
20 Symyx is entitled to injunctive and other forms of equitable relief against Wang.
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22 **THIRD CLAIM FOR RELIEF**

23 (Breach of Duty of Loyalty Against Youqi Wang)

24 31. Symyx incorporates the allegations of paragraphs 1-17, and 25-30 as if fully set
25 forth in this paragraph.

26 32. As an employee of Symyx, Wang owed a duty of undivided loyalty to his
27 employer. Pursuant to this duty, during his employment with Symyx, Wang could not compete
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1 with Symyx, or assist a competitor of Symyx, or use or disclose Symyx's information in
2 contravention of the Wang Agreement. Pursuant to this duty, Wang was also required to always
3 give preference to Symyx's business over his own, similar interests during the course of his
4 employment with Symyx.

5 33. Wang breached his duty of loyalty to Symyx by using Symyx's information, data
6 and employees to secretly create a business that competed with Symyx and infringed Symyx's
7 proprietary patent rights.

8 34. As a direct and proximate result of Wang's breach of duty of loyalty, Symyx has
9 incurred damages in an amount not yet ascertained, but in any event in excess of the jurisdictional
10 amount of this Court. Symyx, therefore, is entitled to recover compensatory damages in an
11 amount to be determined at trial.

12 35. In breaching his duty of loyalty to Symyx, Wang acted with malice, fraud and
13 oppression, and in conscious disregard of Symyx's rights. Accordingly, Symyx is entitled to
14 recover exemplary damages from Wang in an amount to be determined at trial.

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17 **FOURTH CLAIM FOR RELIEF**

18 (Breach of Contract Against Peijun Cong)

19 36. Symyx incorporates the allegations of paragraphs 1-17 as if fully set forth in this
20 paragraph.

21 37. On October 25, 1996, Peijun Cong entered into a Confidential Information,
22 Secrecy, and Invention Agreement with Symyx ("Cong Agreement"). As part of the Cong
23 Agreement, Peijun Cong agreed, while employed at Symyx, not to engage in any employment,
24 consulting or other activity in business directly or indirectly competitive with Symyx's business.

25 38. The Cong Agreement entered into by Symyx and Peijun Cong is a valid and
26 enforceable contract.

27 39. Symyx has performed any or all of its obligations or conditions imposed on it under
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1 the Cong Agreement, or such conditions and obligations have been otherwise waived by Cong's
2 breaches as alleged herein.

3 40. Cong has breached the Cong Agreement by, among other things, using Symyx's
4 business information to form a company to compete with Symyx in violation of the Cong
5 Agreement.

6 41. As a direct and proximate result of Peijun Cong's breach of the Cong Agreement,
7 Symyx has been damaged in an amount to be proven at trial.

8 42. In addition, as a direct and proximate result of Cong's breach of the Cong
9 Agreement, Symyx has been irreparably injured, and has no adequate remedy at law. As a result,
10 Symyx is entitled to injunctive and other forms of equitable relief against Cong.

11 **FIFTH CLAIM FOR RELIEF**

12 (Breach of Duty of Loyalty Against Peijun Cong)

13 43. Symyx incorporates the allegations of paragraphs 1-17, and 37-42 as if fully set
14 forth in this paragraph.

15 44. As an employee of Symyx, Cong owed a duty of undivided loyalty to his employer.
16 Pursuant to this duty, during his employment with Symyx, Cong could not compete with Symyx,
17 or assist a competitor of Symyx, or use or disclose Symyx's information in contravention of the
18 Cong Agreement. Pursuant to this duty, Cong was also required to always give preference to
19 Symyx's business over his own, similar interests during the course of his employment with
20 Symyx.

21 45. Cong breached his duty of loyalty to Symyx by using Symyx's information, data
22 and employees to secretly create a business that competed with Symyx and infringed Symyx's
23 proprietary patent rights.

24 46. As a direct and proximate result of Cong's breach of duty of loyalty, Symyx has
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